

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)
_____)

MDL NO. 1456
Civil Action No. 01-12257-PBS

THIS DOCUMENT RELATES TO)
ALL ACTIONS)
_____)

Hon. Patti B. Saris

**THE J&J DEFENDANTS' STATEMENT OF POSITION CONCERNING THE
DISMISSAL OF THE CLAIMS BY THE CURRENT CLASS PLAINTIFFS'
REPRESENTATIVES**

Except as specified below, the J&J Defendants take no position on whether Larry Young and Ken Wright, as co-executor of the estate of Therese Shepley (the "current class plaintiffs' representatives"), should be permitted to dismiss their claims in the above-captioned action against the J&J Defendants pursuant to Rules 23(e) and Rule 41(a) of the Federal Rules of Civil Procedure.

The J&J Defendants are advised that the current class plaintiffs' representatives intend to seek court approval to dismiss their claims against the J&J Defendants "without prejudice." In the event that class counsel do not propose substitute class representatives for Class 1, the J&J Defendants take no position as to whether dismissal without prejudice is appropriate. However, in the event that class counsel do propose substitute class representatives for Class 1, then the current class plaintiffs' representatives' claims should be dismissed "with prejudice," or, alternatively, their claims should be dismissed subject to the condition that the current class plaintiffs' representatives not file any class action against the J&J Defendants based on subject matters that overlap with Class 1's claims in this case, as any such competing

lawsuit(s) would be prejudicial to the rights of both the J&J Defendants and Class 1. *See In re Phillips Petroleum Securities Litigation*, 109 F.R.D. 602, 609 (D. Del. 1986) (putative class plaintiff permitted to dismiss his individual claim on condition that he not file a competing class action in another court).

Dated: April 16, 2010

/s/ Andrew D. Schau

Andrew D. Schau

Adeel A. Mangi

Elizabeth Shofner

PATTERSON BELKNAP WEBB & TYLER LLP

1133 Avenue of the Americas

New York, New York 10036-6710

(212) 336-2000

Attorneys for the J&J Defendants

CERTIFICATE OF SERVICE

I certify that on April 16, 2010 a true and correct copy of the foregoing was delivered via electronic service to all counsel of record pursuant to Case Management Order No. 2.

/s/ Andrew D. Schau

Andrew D. Schau